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2
3 UNITED STATES DISTRICT COURT
4 DISTRICT OF NEVADA

5 * * *

6 Mack Miller,

Case No. 2:23-cv-00070-CDS-DJA

7 Plaintiff,

Order

8 v.

9 Clark County, Nevada, a political subdivision;
10 Doe Clark County Officers in their personal
11 capacities; Doe Private Security Guards in
their personal capacities; Preventative
Measures Security Firm, LLC, a domestic
limited liability company; et al.,

12 Defendants.

13 And related cross claims.
14

15 Before the Court is Defendant Clark County's motion to take the deposition of Plaintiff
16 Mack Miller, who is currently incarcerated (ECF No. 14) and Clark County's motion to amend its
17 cross claim (ECF No. 19). Plaintiff filed non-oppositions to both motions. (ECF Nos. 20, 24).
18 No other party responded to either motion. The Court thus grants both motions.

19 **I. Discussion.**

20 **A. *Clark County's motion to depose Plaintiff.***

21 Under Federal Rule of Civil Procedure 30(a)(2)(B) a party seeking to depose a witness in
22 custody must obtain leave of court. "The Court 'must grant leave to the extent consistent with
23 Rule 26(b)(1) [defining the scope of relevant discovery] and (2) [granting the Court discretion to
24 limit discovery under some circumstances].'" *Medina v. County of Los Angeles*, No. 2:21-cv-
25 05554-DMG-KESx, 2022 WL 16847547, at *3 (C.D. Cal. Oct. 4, 2022) (citing Fed. R. Civ. P.
26 30(a)(2)). "The circumstances addressed in Rule 26(b)(2) are (1) whether the discovery is
27 cumulative or duplicative or is readily obtainable from another more convenient source;
28 (2) whether the party seeking the discovery has had ample opportunity to obtain the information;

1 and/or (3) whether the discovery falls outside the scope of discovery permitted by Rule 26(b)(1).”
 2 *Id.* “Other courts considering motions to depose incarcerated persons under Rule 30(a)(2)(B)
 3 have considered whether the requested deposition[:] (1) is relevant and proportional to the needs
 4 of the case per Rule 26(b)(1)[;] and (2) implicates any of the concerns listed in Rule 26(b)(2).”
 5 *Id.* (citing *Becker v. OSB Inv., LLC*, No. 2:19-mc-00032-MWF, 2019 WL 12381108, at *1-2
 6 (C.D. Cal. Apr. 5, 2019) and *Griffin v. Johnson*, No. 1:13-cv-01599, 2016 WL 4764670, at *1-2
 7 (E.D. Cal. Sep. 12, 2016)).

8 The Court grants Clark County’s motion to depose Plaintiff and to video record the
 9 deposition.¹ The Court finds that Clark County has demonstrated that the discovery is not
 10 duplicative or obtainable from another source because Plaintiff is a key party in this case, that
 11 Clark County will not have another opportunity to obtain the information because Plaintiff will
 12 likely remain incarcerated until after trial, and that the discovery is relevant and proportional.
 13 Additionally, Plaintiff does not oppose the motion.

14 ***B. Clark County’s motion to amend cross-claim.***

15 Clark County moves to amend its cross-claim against Preventative Measures Security
 16 Firm, LLC to add newly-discovered causes of action for negligent hiring, training, supervision,
 17 and retention. (ECF No. 19). Plaintiff filed a non-opposition to the motion. (ECF No. 20).
 18 Preventative Measures did not respond.

19 Because courts in the Ninth Circuit grant leave to amend with liberality and because no
 20 party opposes, the Court grants Clark County’s motion to amend. Under Rule 15(a)(2) of the
 21 Federal Rules of Civil Procedure, “[t]he court should freely give leave [to amend] when justice so
 22 requires.” Fed. R. Civ. P. 15(a)(2). There is a strong public policy in favor of permitting
 23 amendment. *Bowles v. Reade*, 198 F.3d 752, 757 (9th Cir. 1999). The Ninth Circuit has made
 24 clear that courts should apply Rule 15(a) with “extreme liberality.” *Eminence Capital, LLC v.*
 25

26 ¹ At the end of the motion, Clark County asks the Court to “issue an order granting this leave to
 27 both Defendants in this case.” (ECF No. 14 at 4). Defendant Preventative Measures has not
 28 moved to depose Plaintiff. Nor has it joined Clark County’s motion. Without more, the Court
 will not extend its ruling to Preventative Measures.

1 *Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003). Additionally, under Local Rule 7-2(d), the
2 failure of an opposing party to file points and authorities in response to any motion constitutes a
3 consent to the granting of the motion. LR 7-2(d). Considering the strong public policy in favor
4 of permitting amendment, the Ninth Circuit's caution to apply Rule 15(a) with extreme liberality,
5 and that no party has opposed, granting leave to amend is appropriate here. The Court thus grants
6 Clark County's motion to amend.

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8 **IT IS THEREFORE ORDERED** that Clark County's motion to depose Plaintiff (ECF
9 No. 14) is **granted**. The Southern Desert Correctional Center shall allow for the videotaped
10 deposition of Mack Miller, Inmate No. 1272034 at a date and time that is mutually convenient for
11 the parties and the prison.

12 **IT IS FURTHER ORDERED** that Clark County's motion to amend its cross-claim (ECF
13 No. 19) is **granted**. Clark County must file and serve its amended cross-claim as required by
14 Local Rule 15-1(b).

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16 DATED: January 2, 2024



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18 DANIEL J. ALBREGTS
19 UNITED STATES MAGISTRATE JUDGE
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